

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFERY GILL,

Defendant-Appellant.

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UNPUBLISHED

March 27, 2007

No. 267950

Wayne Circuit Court

LC No. 05-008023-01

Before: Zahra, P.J. and Bandstra and Owens, JJ.

PER CURIAM.

Defendant was convicted at a bench trial of assault with intent to murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Around midnight on June 12, 2005, Deandre Brown was walking down the street with his girlfriend, Lillian Malone, when a car swerved towards him. Defendant jumped out of the backseat of the car and told Mr. Brown, “[d]on’t run.” At this time, Mr. Brown got a good look at defendant and observed defendant reaching for a rifle in the backseat. Upon seeing the gun, Mr. Brown ran. A couple of seconds later, Mr. Brown heard three shots coming from behind him, one of which hit him in the back. Mr. Brown assumed defendant shot him, even though he did not actually see defendant fire the weapon, because defendant was the only person outside the vehicle and the only person Mr. Brown saw reach for the gun.

Defendant argues on appeal that insufficient evidence was produced to establish his identity and to show a specific intent to kill.

Sufficiency of the evidence challenges in a criminal trial are reviewed de novo. *People v Cox*, 268 Mich App 440, 443; 709 NW2d 152 (2005). Under de novo review, a court gives no deference to the trial court. *People v Howard*, 233 Mich App 52, 54; 595 NW2d 497 (1998).

In reviewing the sufficiency of the evidence presented in a criminal trial, an appellate court reviews the evidence to determine whether, when viewed in the light most favorable to the prosecution, it would warrant a rational trier of fact in finding that all the elements of the crime were proven beyond a reasonable doubt. *People v Dewald*, 267 Mich App 365, 371; 705 NW2d 167 (2005). Circumstantial evidence and reasonable inferences drawn from it may be sufficient

to prove the elements of a crime, including the identity of the perpetrator. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005); *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967).

Identity is an essential element of every criminal prosecution. The prosecution must prove the identity of the defendant as the perpetrator of the charged offense beyond a reasonable doubt. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976), *Kern*, *supra* at 409.

The evidence viewed in the light most favorable to the prosecution showed that the victim had known defendant for 5 to 6 years, and that the victim positively identified defendant as the person who jumped out of the car. The evidence also showed that defendant was the only person seen outside the car and the only person seen reaching for a rifle. Although Ms. Malone could not positively identify defendant, her testimony corroborated the victim's in that she only saw one person outside the car and that one person had a rifle. Moreover, Ms. Malone saw that same person shoot at Mr. Brown. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to reasonably find that defendant was the person who assaulted the victim and used a firearm during the commission of the offense.

Defendant also argues that, even if the trial court reasonably found that he fired a gun at the victim, there was no evidence to establish the requisite intent for the crime of assault with intent to murder.

In establishing assault with intent to murder, the prosecution must prove beyond a reasonable doubt the following elements: (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Brown*, 267 Mich App 141, 147-148; 703 NW2d 230 (2005).

The intent to kill may be inferred from all the facts in evidence, including the seriousness of the injury and the use of a lethal weapon. See *People v Curry*, 175 Mich App 33, 45; 437 NW2d 310 (1989); *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999); *People v Ray*, 56 Mich App 610, 615; 224 NW2d 735 (1974). An intent to kill can also be inferred from conduct the natural tendency of which is to cause death or great bodily harm. *People v Eisenberg*, 72 Mich App 106, 114; 249 NW2d 313 (1976). Because an actor's state of mind is difficult to prove, only minimal circumstantial evidence is required. *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2005).

Viewed in a light most favorable to the prosecution, the evidence established that defendant sought out the victim by jumping out of a vehicle that swerved towards the victim. Ms. Malone heard the person who jumped out of the car call the victim by name, also indicating the shooter's intent to seek out the victim. Further, defendant ordered the victim not to run and then reached for a rifle in the backseat of the car. Ms. Malone observed this same person outside the car fire shots at the victim. The evidence presented at trial indicated that at least three shots were fired at the victim from a close range, one of which hit the victim in the back as he ran away from defendant. Therefore, viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find that defendant, who sought victim out, told victim

not to run, reached for a rifle, and fired several shots at close range causing serious injury to victim had the requisite intent to kill the victim.

Affirmed.

/s/ Brian K. Zahra

/s/ Richard A. Bandstra

/s/ Donald S. Owens